

## **REMARKS**

Claims 1-26 are pending. By the present Amendment, Claims 12 and 13 are amended, thereby leaving Claims 1-11 and 14-26 unchanged.

### **Rejections Under 35 U.S.C. § 102(b) and 103(a)**

Claims 1-8, 10, 12-19, 21, and 23-36 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,102,134 (“Alsrue”). Claims 9 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Alsrue in view of U.S. Patent No. 4,976,173 (“Yang”). Claims 11 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,021,573 (“Kikuchi”) in view of Alsrue. Reconsideration of the rejections is respectfully requested.

To establish a *prima facie* case of obviousness, three basic criteria must be met.

*M.P.E.P.* §§ 706.02(j) and 2143.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be both found in the prior art, not in applicants' disclosure.

### **Independent Claim 1 and dependent Claims 2-11**

Claim 1 recites a power tool comprising a body housing a motor and a drive mechanism driven by the motor and providing a first grip surface, the body having a rearward end and defining a body axis, and a hand grip connected to the rearward end of the body, the hand grip providing a second grip surface and being supported for movement relative to the body between a first position, in which the first grip surface and the second grip surface are generally aligned, a second position, in which the second grip surface defines an obtuse angle with respect to the body axis, and a third position, in which the second grip surface is generally perpendicular to the first grip surface.

The power tool 10 of Alsrue includes a first housing member 12 and a second housing member 14 connected to a rear portion 40 of the first housing member 12 for pivoting movement relative to the first housing member 12 about a pivot 44. As shown in Fig. 2 of Alsrue, a

forward end of the second housing member 14 is formed around the rear portion 40 of the first housing member 40. As also shown in Fig. 2 of Alsruehe and to facilitate pivoting movement of the second housing member 14 with respect to the first housing member 12, the forward end of the second housing member 12 includes a cut-out portion 72. In this manner, when the second housing member 12 is pivoted toward the second position, a portion of the first housing member 12 can be received in the cut-out portion 72.

To pivot the second housing member 14, an operator slides an activation member 70 along an upper surface of the second housing member 14, causing fingers 84 to move rearwardly with respect to the first housing member 12. The rearward motion of the fingers 84 moves a pin 90 out of a first detent 46 positioned along the outer periphery of the rear portion 40 of the first housing member 212, allowing an operator to pivot the second housing member 14 toward the second position. After the second housing member 14 is in the second position, the operator releases the activation member 70. A biasing member 80 then forces the fingers 84 forwardly, moving the pin 90 into a second detent 48.

Alsruehe does not teach or suggest a power tool including, among other things, a hand grip being supported for movement relative to the body between a first position, in which the first grip surface and the second grip surface are generally aligned, a second position, in which the second grip surface defines an obtuse angle with respect to the body axis, and a third position, in which the second grip surface is generally perpendicular to the first grip surface. Rather, as noted by the Examiner, the second housing member 14 of Alsruehe is connected to a rear portion 40 of the first housing member 12 for pivoting movement relative to the first housing member 12 between a first position (shown in Fig. 1), in which the first and second housing members 12, 14 are generally aligned, and a second position (shown in Fig. 2), in which the second housing member 14 is oriented at a non-perpendicular angle with respect to the first housing member 12. For these and other reasons, Alsruehe does not teach or suggest the subject matter of Claim 1.

In addition to the first and second detents 46, 48, Alsruehe mentions that the rear portion 40 of the second housing member 14 can include more detents “to lock the housing members in additional positions with respect to one another.” Column 3, lines 64-65. The Examiner argues that in view of this reference to modifying the rear portion 40 of the second housing member 14 to include more than two detents, “[i]t is inherent or would be obvious that additional positions

such as a ‘generally perpendicular’ [position] is or can be included”. Applicants respectfully disagree.

As explained in greater detail below, the power tool 10 of Alsruehe cannot be modified as suggested by the Examiner so that the second housing member 14 can be pivoted toward a third position, in which the second grip surface is generally perpendicular to the first grip surface. Moreover, Alsruehe teaches away from such a modification.

Specifically, while Alsruehe mentions that the rear portion 40 of the second housing member 14 could be modified to include more than two detents, Alsruehe makes no mention of where these additional detents would be located. Further, Alsruehe fails to teach or suggest that the second housing member 14 of such a modified power tool 10 could be pivoted toward a third position, in which the second grip surface is generally perpendicular to the first grip surface.

If power tool 10 of Alsruehe were modified to include additional detents positioned along the rear portion 40 between the first and second detents 46, 48, the second housing member 14 of such a modified power tool 10 would not be able to pivot toward an orientation in which the second housing member 14 is substantially perpendicular to the first housing member 12. Rather, such a modification to the power tool 10 of Alsruehe would only enable the second housing member 14 to be pivoted toward positions in which the second housing member 14 is at an obtuse angle (i.e., a non-perpendicular angle) with respect to the first housing member 12.

Alternatively, if power tool 10 of Alsruehe were modified to include an additional detent positioned forwardly from the first detent 46 (i.e., between the first detent 46 and a rearward end of the first housing member 12), the engagement between the rearward end of the first housing member 12 and the forward end of the second housing member 14 (see the upper portion of Fig. 4) would prevent the second housing member 14 from being pivoted about the pivot 44 toward a pivoted position which would allow the pin 90 to engage such an additional detent.

Moreover, even if it was possible to modify the power tool 10 of Alsruehe to include an additional detent positioned forwardly from the first detent 46 and even if it was possible to modify the power tool 10 of Alsruehe so that the engagement between the rearward end of the first housing member 12 and the forward end of the second housing member 14 would not prevent the second housing member 14 from being pivoted about the pivot 44 toward a pivoted position that would allow the pin 90 to engage the additional detent, the additional detent could not be positioned far enough forwardly along the periphery of the rear portion 40 of the first

housing member 12 to allow the pin 90 to engage the additional detent and also allow the second housing member 14 to be pivoted about the pivot 44 toward a position in which the second housing member 14 is substantially perpendicular to the first housing member 12. Rather, even with these modifications to the power tool 10 of Alsruhe, the second housing member 14 could only pivot toward a position in which the second housing member 14 is at an obtuse angle (i.e., a non-perpendicular angle) with respect to the first housing member 12.

Similarly, if the power tool 10 of Alsrhue were modified to include an additional detent positioned forwardly from the second detent 48 (i.e., between the second detent 48 and a rearward end of the first housing member 12), the engagement between the rearward end of the first housing member 12 and the forward end of the second housing member 14 (see the lower portion of Figs. 2 and 5) would prevent the second housing member 14 from being pivoted about the pivot 44 toward a pivoted position which would allow the pin 90 to engage such an additional detent. To accommodate movement of the second housing member 14 toward such a position without causing interference between the rearward end of the first housing member 12 and the forward end of the second housing member 14, the cutout 72 would have to be enlarged by a significant amount. Alsrhue does not teach or suggest that such a modification could or should be made to the cutout 72. Moreover, such an enlargement would necessitate the removal of the switch 28 and/or the redesign of the battery 26, and Alsrhue makes no reference to how or why such modifications would be made.

In summary, Alsrhue does not teach or suggest all of the claim limitations of independent Claim 1. Further, there is no teaching or suggestion to modify the power tool 10 of Alsrhue as suggested by the Examiner or that such a modified power tool would or could include all of the claim limitations of independent Claim 1. Therefore, Applicants respectfully submit that the Examiner has failed to present a *prima facia* case of obviousness of Claim 1 based upon the prior art as required by 35 U.S.C. § 103.

For these and other reasons, the prior art does not teach or suggest the subject matter defined by independent Claim 1. Accordingly, independent Claim 1 is allowable. Dependent Claims 2-11 depend from Claim 1 and are allowable for the same and other reasons.

Claim 9 ultimately depends from independent Claim 1 and is allowable for at least the reasons discussed above with respect to Claim 1.

As mentioned above, Alsruehe does not teach or suggest the subject matter of Claim 1. Yang does not cure the deficiencies of Alsruehe. Specifically, Yang does not teach or suggest, among other things, a hand grip being supported for movement relative to the body between a first position, in which the first grip surface and the second grip surface are generally aligned, a second position, in which the second grip surface defines an obtuse angle with respect to the body axis, and a third position, in which the second grip surface is generally perpendicular to the first grip surface. Rather, the electric tool of Yang includes a body 103 having a rearwardly opening transverse slot 101 defined between rearwardly extending arms. The electric tool of Yang also includes a handle 106 having a forwardly protruding lug 104, which is engageable in the slot 101 of the body 103 to pivotably connect the handle 106 to the body 103. As shown in Figs. 1 and 1-1 of Yang, the forward end of the handle 106 includes arcuately-shaped recesses for receiving the rearwardly extending arms of the body 103. The arcuately-shaped recesses limit pivoting movement of the handle 106 with respect to the body 103 and would prevent the handle 106 from being moved toward a position, in which the handle 106 is substantially perpendicular to the body 103.

For these and other reasons, Alsruehe and Yang, alone or in combination do not teach or suggest all the claim limitations of Claim 9. Accordingly, Claim 9 is allowable.

Claim 11 ultimately depends from independent Claim 1 and is allowable for at least the reasons discussed above with respect to Claim 1.

As mentioned above, Alsruehe does not teach or suggest the subject matter of Claim 1. Kikuchi does not cure the deficiencies of Alsruehe. Specifically, Kikuchi does not teach or suggest, among other things, a hand grip being supported for movement relative to the body between a first position, in which the first grip surface and the second grip surface are generally aligned, a second position, in which the second grip surface defines an obtuse angle with respect to the body axis, and a third position, in which the second grip surface is generally perpendicular to the first grip surface. Rather, as acknowledged by the Examiner, the power tool 10 of Kikuchi includes “a housing 14 having a body and a hand grip integrally formed with the body.” Moreover, the fact that the body and the hand grip of the power tool 10 of Kikuchi are integrally formed teaches away from the modification suggested by the Examiner.

For these and other reasons, Alsruehe and Kikuchi, alone or in combination do not teach or suggest all the claim limitations of Claim 11. Accordingly, Claim 11 is allowable.

**Independent Claim 12 and dependent Claims 13-22**

Claim 12 defines a power tool comprising a body housing a motor and a drive mechanism driven by the motor, the body having a rearward end, a hand grip connected to the rearward end of the body, the hand grip being supported for movement relative to the body, a locking mechanism for locking the hand grip in a position relative to the body, the locking mechanism having a locked condition, in which the locking mechanism prevents movement of the hand grip relative to the body, and an unlocked position, and an actuator supported on one of the body and the hand grip and operable to move the locking mechanism between the locked condition and the unlocked condition. Claim 12 specifies that the body provides a first grip surface and defines a body axis, that the hand grip provides a second grip surface, and that the hand grip is supported for movement relative to the body toward a position, in which the second grip surface is generally perpendicular to the first grip surface.

Alsruehe does not teach or suggest a power tool including, among other things, a hand grip supported for movement relative to the body toward a position, in which the second grip surface is generally perpendicular to the first grip surface. Rather, as noted by the Examiner, the second housing member 14 of Alsruehe is connected to a rear portion 40 of the first housing member 12 for pivoting movement relative to the first housing member 12 between a first position (shown in Fig. 1), in which the first and second housing members 12, 14 are generally aligned, and a second position (shown in Fig. 2), in which the second housing member 14 is oriented at a non-perpendicular angle with respect to the first housing member 12. For these and other reasons, Alsruehe does not teach or suggest the subject matter of Claim 12.

Further, there is no teaching or suggestion to modify the power tool 10 of Alsruehe as suggested by the Examiner or that such a modified power tool would or could include all of the claim limitations of independent Claim 12.

Rather than re-present the arguments set forth above with respect to this contention, for brevity's sake, Applicants refer to the discussion above for Claim 1. With respect to Claim 12, the same arguments apply to the lack of a suggestion to modify the power tool 10 of Alsruehe as suggested by the Examiner or that such a modified power tool would or could include all of the claim limitations of independent Claim 14. Therefore, Applicants respectfully submit that the

Examiner has failed to present a *prima facia* case of obviousness of Claim 12 based upon the prior art as required by 35 U.S.C. § 103.

For these and other reasons, Alsruhe does not teach or suggest the subject matter defined by independent Claim 12. Accordingly, Claim 12 is allowable. Claims 13-22 depend from independent Claim 12 and are allowable for the same and other reasons.

Claim 20 ultimately depends from independent Claim 1 and is allowable for at least the reasons discussed above with respect to Claim 12.

As mentioned above, Alsruhe does not teach or suggest the subject matter of Claim 12. Yang does not cure the deficiencies of Alsruhe. Specifically, Yang does not teach or suggest, among other things, a hand grip being supported for movement relative to the body between a first position, in which the first grip surface and the second grip surface are generally aligned, a second position, in which the second grip surface defines an obtuse angle with respect to the body axis, and a third position, in which the second grip surface is generally perpendicular to the first grip surface. Rather, the electric tool of Yang includes a body 103 having a rearwardly opening transverse slot 101 defined between rearwardly extending arms. The electric tool of Yang also includes a handle 106 having a forwardly protruding lug 104, which is engageable in the slot 101 of the body 103 to pivotably connect the handle 106 to the body 103. As shown in Figs. 1 and 1-1 of Yang, the forward end of the handle 106 includes arcuately-shaped recesses for engaging the rearwardly extending arms of the body 103. The arcuately-shaped recesses limit pivoting movement of the handle 106 with respect to the body 103 and would prevent the handle 106 from being moved toward a position, in which the handle 106 is substantially perpendicular to the body 103.

For these and other reasons, Alsruhe and Yang, alone or in combination do not teach or suggest all the claim limitations of Claim 20. Accordingly, Claim 20 is allowable.

Claim 22 ultimately depends from independent Claim 12 and is allowable for at least the reasons discussed above with respect to Claim 12.

As mentioned above, Alsruhe does not teach or suggest the subject matter of Claim 12. Kikuchi does not cure the deficiencies of Alsruhe. Specifically, Kikuchi does not teach or suggest, among other things, a hand grip being supported for movement relative to the body between a first position, in which the first grip surface and the second grip surface are generally aligned, a second position, in which the second grip surface defines an obtuse angle with respect

to the body axis, and a third position, in which the second grip surface is generally perpendicular to the first grip surface. Rather, as acknowledged by the Examiner, the power tool 10 of Kikuchi includes “a housing 14 having a body and a hand grip integrally formed with the body.” Moreover, the fact that the body and the hand grip of the power tool 10 of Kikuchi are *integrally formed* teaches away from the modification suggested by the Examiner.

For these and other reasons, Alsruehe and Kikuchi, alone or in combination do not teach or suggest all the claim limitations of Claim 22. Accordingly, Claim 22 is allowable.

#### **Independent Claim 23 and dependent Claims 24-26**

Claim 23 defines a method of operating a power tool, the power tool including a body housing a motor and a drive mechanism driven by the motor and providing a first grip surface, the body having a rearward end and defining a body axis, and a hand grip connected to the rearward end of the body, the hand grip providing a second grip surface and being supported for movement relative to the body, the method comprising the acts of positioning the hand grip in a first position in which the first grip surface and the second grip surface are generally aligned, operating the power tool in the first position, moving the hand grip relative to the body to a second position in which the second grip surface defines an obtuse angle with respect to the body axis, operating the power tool in the second position, moving the hand grip relative to the body to a third position in which the second grip surface is generally perpendicular to the first grip surface, and operating the power tool in the third position.

Alsruehe does not teach or suggest a method of operating a power tool including, among other things, the acts of moving the hand grip relative to the body to a third position in which the second grip surface is generally perpendicular to the first grip surface, and operating the power tool in the third position. Rather, as noted by the Examiner, the second housing member 14 of Alsruehe is connected to a rear portion 40 of the first housing member 12 for pivoting movement relative to the first housing member 12 between a first position (shown in Fig. 1), in which the first and second housing members 12, 14 are generally aligned, and a second position (shown in Fig. 2), in which the second housing member 14 is oriented at a non-perpendicular angle with respect to the first housing member 12. For these and other reasons, Alsruehe does not teach or suggest the subject matter of Claim 23.

Further, there is no teaching or suggestion to modify the power tool 10 of Alsruehe as suggested by the Examiner or that such a modified power tool would or could include all of the claim limitations of independent Claim 23.

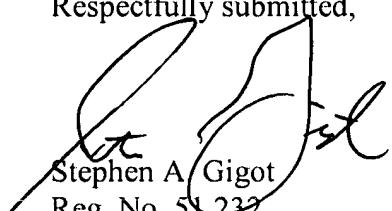
Rather than re-present the arguments set forth above with respect to this contention, for brevity's sake, Applicants refer to the discussion above for Claim 1. With respect to Claim 23, the same arguments apply to the lack of a suggestion to modify the power tool 10 of Alsruehe as suggested by the Examiner or that such a modified power tool would or could include all of the claim limitations of independent Claim 23. Therefore, Applicants respectfully submit that the Examiner has failed to present a *prima facia* case of obviousness of Claim 23 based upon the prior art as required by 35 U.S.C. § 103.

For these and other reasons, Alsruehe does not teach or suggestion the subject matter defined by independent Claim 23. Accordingly, Claim 23 is allowable. Claims 24-26 depend from independent Claim 23 and are allowable for the same and other reasons.

**CONCLUSION**

In view of the foregoing, entry of the present Amendment and allowance of the application are respectfully requested.

Respectfully submitted,



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